

Not for Publication

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FINLEY FENTON,

Plaintiff,

v.

U.S. SECURITY ASSOCIATES, INC. and
JOHN DOES 1-10,

Defendants.

Civil Action No. 17-13589
(JMV) (MF)

ORDER

John Michael Vazquez, U.S.D.J.

This matter comes before the Court on the January 9, 2020 Report and Recommendation (the “R&R”) of Magistrate Judge Mark Falk. D.E. 21. The R&R addressed Defendant U.S. Security Associates, Inc.’s unopposed motion to dismiss for failure to prosecute. D.E. 20. The R&R recommends that this Court dismiss Plaintiff’s Complaint because Plaintiff failed to comply with the Court’s March 8, 2019 Order compelling his attendance at a conference before the Court knowing dismissal was a possible sanction (D.E. 17), failed to respond to defense counsel’s attempted communications for over a year, failed to oppose Defendant’s motion, and appears to have “willfully abandoned his case against Defendant.” R&R at 5; and it

APPEARING that the parties were advised as to the dates that any objections to this R&R were to be served and filed. D.E. 21; and it

APPEARING that no objections to the R&R have been received and the time for filing any objections has expired; and it

APPEARING that “where no objections are made in regard to a report or parts thereof, the district court will adopt the report and accept the recommendation if it is ‘satisf[ied] . . . that there is no clear error on the face of the record.’” *Sportscare of Am., P.C. v. Multiplan, Inc.*, No. 10-4414, 2011 WL 500195, at *1 (D.N.J. Feb. 10, 2011) (quoting Fed. R. Civ. P. 72 Advisory Committee's Notes); and it

APPEARING that this Court independently reviewed the record and the R&R, and hereby adopts it as the Opinion of this Court. In adopting the R&R, this Court, like Judge Falk, is mindful of *Hildebrand v. Allegheny County*, which reiterates that when possible, cases should be decided on the merits. 923 F.3d 128, 132 (3d Cir. 2019). In *Hildebrand*, the Third Circuit echoed Supreme Court guidance and repeated its prior directions that a sanction of dismissal with prejudice is extreme and “must be a sanction of last, not first, resort.” *Id.* (quoting *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 867, 869 (3d Cir. 1984)). Here, given Plaintiff’s repeated failure to participate in litigation that he initiated, this Court concludes that Judge Falk appropriately concluded that the *Poulis* factors weigh towards dismissal;

THEREFORE, for the foregoing reasons, and for good cause shown,

IT IS on this 2nd day of June, 2020,

ORDERED that the Court adopts the Report and Recommendation, D.E. 21, in its entirety; and it is further

ORDERED that Defendant’s motion to dismiss (D.E. 20) is **GRANTED** and Plaintiff’s Complaint is hereby **DISMISSED**; and it is further

ORDERED that the Clerk of the Court is directed to close this matter; and it is further

ORDERED that the Clerk's Office shall mail a copy of this Order and the accompanying Report and Recommendation (D.E. 21) to Plaintiff by regular mail and by certified mail return receipt.



John Michael Vazquez, U.S.D.J.